

ITEM:	6
SUBJECT:	Del Mar Farms, Jon Maring, Lee Del Don, and Bernard N. & Barbara C. O'Neill Trust, Stanislaus County
BOARD ACTION:	<i>Consideration of an Administrative Civil Liability (ACLO)</i>
BACKGROUND:	<p>Del Mar Farms and owners Jon Maring and Lee Del Don (collectively Del Mar Farms) lease and operate irrigated lands from multiple property owners, including parcels on the north side of JT Crow Road (about 375 acres) and on the south side (about 49 acres).</p> <p>Del Mar Farms has obtained regulatory coverage for waste discharges by enrolling in the Westside San Joaquin River Watershed Coalition (Coalition). Their waste discharges are governed by the Coalition Group Conditional Waiver of Waste Discharge Requirements from Irrigated Lands (Resolution R5-2011-0032, Short Term Renewal of Order R5-2006-0053, the Conditional Waiver). Upon obtaining regulatory coverage under the Conditional Waiver, dischargers must comply with the conditions it sets forth, including preventing conditions of pollution or nuisance.</p> <p>On 19 May 2011, staff inspected agricultural lands around Orestimba Creek in response to citizen complaints of sediment plumes in waterways. Staff observed a significant sediment load in water in the Amaral Line outfall to the San Joaquin River. The Amaral Line was followed upstream to a sediment-laden discharge from irrigated lands later found to be leased and farmed by Del Mar Farms.</p> <p>On 1 June 2011, the Coalition sponsored a grower outreach meeting to discuss water quality, agricultural waste management practices, and current/proposed ILRP regulations. At this meeting board staff presented information on local water quality issues and board enforcement actions. The presentation included photographs of the 19 May discharge event. After the meeting, staff met with Jon Maring of Del Mar Farms to discuss the 19 May waste discharge event. He described the long-term (drip irrigation) and short-term plans (applying polyacrylamide to soils) for mitigation.</p> <p>On 6 July 2011, board staff investigated a citizen complaint of a waste discharge currently flowing into the Amaral Line. Sediment-laden wastewater was observed flowing into the upstream end of the Amaral Line from irrigated lands operated by Del Mar Farms. Staff followed the Amaral Line to the San Joaquin River and documented a sediment plume at the Amaral Line outfall.</p> <p>On 19 July 2011, while conducting a follow-up inspection, staff again observed a sediment discharge from the same parcels as during the 19 May discharge, and flowing from these irrigated lands into the Amaral Line.</p> <p>The discharges observed on 19 May, and 6 and 19 July 2011 created a condition of pollution or nuisance in violation of the Basin Plan and Conditional Waiver. The discharges also violated applicable water quality objectives by raising the turbidity concentration by over 20 percent, thus violating the water quality objectives in the Basin Plan. This is also a violation of the conditions in the Conditional Waiver.</p> <p>On 14 May 2012, Prosecution staff issued an ACL to the Dischargers in the amount of \$123,191. The penalty was calculated based on a per day violation for the 19 May 2011 discharge, and on per gallon amounts for the 6 and 19 July 2011 discharges, with considerations and adjustments pursuant to the State Water Resources Control Board's Enforcement Policy.</p>

ISSUES:	<p>Comments on the Complaint were received from Theresa Dunham, Esq., on behalf of Del Mar Farms; and from Bernard O'Neill, owner of some of the discharging parcels. Prosecution staff has prepared a Response to Comments document that is part of the agenda package. The issues are summarized below.</p> <p>Del Mar Farms asserts that its waste discharge alone could not have contributed to exceedances of sediment water quality objectives. The Prosecution Team responds that Complaint findings clearly state that staff's observations indicate that Del Mar Farms and the other named parties caused or contributed to the violations. Board staff made every reasonable effort to identify other potential dischargers to the Amaral Line by inspecting the length of the line. Assuming for the sake of argument that other wastewater sources could be identified, such contributions do not mitigate or excuse Del Mar Farms' contribution to the downstream impact.</p> <p>Del Mar Farms further asserts that the board's enforcement policy is not being applied in a fair and consistent manner because a formal warning was not issued by the board prior to issuance of the ACL Complaint. The Prosecution Team responds that it is not the burden of the water board to formally notify dischargers of violations before the dischargers take corrective action, or before the board pursues enforcement. Del Mar Farms and the other parties named in the Complaint are responsible for implementing effective management practices to prevent violations of applicable water quality standards. Their obligation to comply with the Conditional Waiver and implement effective practices started when the parcels in question were enrolled in 2010. A grower's obligation to protect water quality does not start with the board staff investigation or with notification of violations.</p> <p>Del Mar Farms challenges the basis for the ACL Complaint's penalty calculations on grounds that the board cannot show harm to beneficial uses or water quality violations in the San Joaquin River. The Prosecution Team responds that sediment discharges to the Amaral Line have harmed or potentially harmed downstream agricultural supply beneficial uses. Any use of the Amaral Line for irrigation supply by downstream users would have been impaired due to clogging of filters necessary for pressurized irrigation systems or deposition of excess sediments in furrows, which would decrease irrigation distribution uniformity and efficiency. Additionally, the Del Mar Farms waste discharges caused sediment plumes in the San Joaquin River, thus degrading fish spawning habitat and recreational opportunities. In addition, there are numerous water quality problems identified in the Orestimba Creek Watershed for which the Coalition has developed management plans. A number of those pollutants are associated with sediments, such as pesticides and sediment toxicity.</p>
ACLO RECOMMENDATION :	<p>Board staff's first discovery of Del Mar Farms' waste discharge was on 19 May 2011. Staff met with the Discharger on 1 June 2011 and discussed ways to reduce or eliminate waste discharges. Board staff observed additional discharges on 6 and 19 July 2011. The 19 July event was from the same field as the 19 May discharge. A number of short term mitigation options were available and within the capabilities of the operator that could have been used to prevent the July 2011 discharges. These options either were not used, or the type and method chosen by the Discharger was ineffective. The Prosecution Team therefore recommends that the board adopt the proposed ACL Order assessing a \$123,191 penalty.</p>

Mgmt. Review FSM
Legal Review _____

2/3 August 2012 Meeting
Central Valley Regional Water Quality Control Board meeting
11020 Sun Center Dr. #200, Rancho Cordova, CA 95670